

EXHIBIT 21

Kristy Hanson (9680)
Lesley Christiansen (16017)
MACARTHUR, HEDER & METLER, PLLC
Attorneys for Lauren Marsh Zimmer
4844 North 300 West, Third Floor
Provo, Utah 84604
Telephone: (801) 377-1900
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IN THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT

In the matter of the marriage of:

LAUREN R. MARSH,

and

KIRK RUSSEL MARSH.

**OBJECTION TO REQUEST TO
SUBMIT ON EX PARTE MOTION TO
STAY**

Civil No.: **184701031**

Judge: **Michael Edwards**

Commissioner: **Christina Wilson**

COMES NOW Lauren Marsh Zimmer (hereinafter “Lauren”), by and through her attorney, Kristy L. Hanson, of the firm of MACARTHUR, HEDER & METLER, and objects to Kirk Russel Marsh’s (hereinafter “Russel”) *Proposed Order on Motion to Stay Petitioner’s Motion to Enforce, Motion to Waive Mediation Requirements and Petition to Modify Divorce Decree* (hereinafter “*Proposed Order*”) and the accompanying *Request to Submit on Ex Parte Motion to Stay* (hereinafter “*Request to Submit*”) which were both filed on February 24, 2025. ***See Court File, Docket Nos. 559 and 560.*** Both the *Proposed Order* and *Request to Submit* are inappropriately and untimely filed pursuant to both URCP Rule 101 and URCP Rule 7. Relevant background for this case is as follows:

1. On March 29, 2024, Russel filed a *Petition to Modify*. ***See Court File, Docket No. 523.*** Notably, Russel did not serve Lauren pursuant to URCP 4.

2. On August 13, 2024, this Court dismissed Russel's *Petition to Modify* for failure to serve Lauren within 120 days of filing the Petition. ***See Court File, Docket No. 525.***
3. On December 17, 2024, Lauren filed a *Motion to Enforce and Declaration in Support*. ***See Court File, Docket Nos. 535 and 536.***
4. The Court set a hearing on this matter for March 17, 2025 at 11:30 am before the Honorable Commissioner Wilson. ***See Court File, Docket No. 542.***
5. On February 24, 2025, Russel filed an *Ex Parte Motion to Stay Petitioner's Motion to Enforce, Motion to Waive Mediation Requirements, and Motion to Modify Decree of Divorce*. ***See Court File, Docket No. 557.*** Russel also attempted to file a *Petition to Modify*, but as of the filing of this present *Objection*, Russel had not paid the required filing fee and the Court indicated that they could not file the *Petition to Modify* until he had done so.
6. No hearing on the *Ex Parte Motion to Stay* was requested or obtained.
7. On February 24, 2025, Russel prematurely filed the *Proposed Order* and the accompanying *Request to Submit* concurrently with his *Ex Parte Motion to Stay*. ***See Court File, Docket Nos. 559 and 560.***

The *Motion for Stay*, *Request to Submit*, and the *Proposed Order* include due process and civil procedure mistakes that make the signing of the *Proposed Order* inequitable and inappropriate. Russel improperly filed a *Request to Submit* without requesting a hearing on the matter or providing Lauren with the opportunity to respond to his *Motion to Stay*.

DATED and signed this 25th day of February, 2025.

/s/ Kristy Hanson
KRISTY L. HANSON
Attorney for Lauren Marsh Zimmer

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MacArthur, Heder & Metler, PLLC, 4844 North 300 West, Third Floor, Provo, Utah 84604, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing Objection was served upon the following on the 25th day of February, 2025:

PARTY	METHOD OF SERVICE
Kirk Russel Marsh 10036 Glenmere Road Fairfax, VA 22032 kirkrussel@gmail.com <i>Respondent</i>	☐ Hand-delivered ☐ U.S. Mail ☒ E-Mail ☐ Utah Court Electronic Filing System

/s/ Mickala Mahaffey

Kirk Russel Marsh
10036 Glenmere Rd
Fairfax, VA 22032
(571) 430-9473

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT

In the matter of the marriage of:

LAUREN R. MARSH
and

KIRK RUSSEL MARSH

**OPPOSITION TO OPPOSITION TO
REQUEST TO SUBMIT ON EX PARTE
MOTION TO STAY**

Civil No: 184701031

Commissioner: Christina Wilson

Judge: Michael Edwards

COMES NOW Kirk Russel Marsh ('Russel') objects to Lauren's *Objection to request to submit on Ex Parte Motion to Stay*, filed February 25, 2025. Although Lauren, through her counsel, claims Russel made due process and civil procedure mistakes that make the signing of the *Proposed Order* equitable and inappropriate, Russel disagrees. Relevant background includes:

1. On February 12, 2025, Lauren, through counsel, filed *Ex Parte Motion to Waive Mediation Requirements, Request/Notice to Submit for Signature, and Order (Proposed) to Waive Mediation Requirement. see Court file*
2. Lauren's counsel does not claim that filing all three requests simultaneously violated due process and civil procedure.
3. On February 24, 2025 Russel, a pro se litigant, filed *Ex Parte Motion to Stay Petitioner's Motion to Enforce, Motion to Waive Mediation Requirements, and Motion to Modify Decree of Divorce*, as well as *Request to Submit, and Order (Proposed) on Motion to Stay*
4. Russel concurrently filed *Petition to Modify Child Support* and paid the filing fee. *See Exhibit 1*
Russel also filed *Memorandum in Support of Russel's Petition to Modify Child Support, and Rule*

1006 Summary of Exhibits for Russel's Petition to Modify Child Support, Memorandum and Motion to Stay

5. The Court informed Russel the *Petition* would be held for 24 hours while the payment cleared.
6. Russel's *Petition to Modify Child Support* was filed in MyCase on February 25, 2025. *See Exhibit 2*
7. Russel requested a hearing in the *Petition to Modify* for the *Petition* well as the *Motion for Stay*.
8. Lauren's *Objection*, stating "at the filing of this present *Objection*, Russel had not paid the required filing fee and the Court indicated that they could not file the *Petition to Modify* until he had done so." This is blatantly untrue.
 - a. The *Petition to Modify* appears in MyCase before the *Objection*. *see Exhibit 2*
 - b. That the *Petition* was already in MyCase shows Lauren's counsel acted in bad-faith by submitting information to the Court which could be reasonably known to be untrue.
 - i. Lauren's counsel submitted that "at the filing of this present *Objection*, Russel had not paid the filing fee." Counsel submits, as fact, information which was either supposition, or blatant dishonesty.
 - ii. The statement "the Court indicated" suggest Lauren's counsel had been in contact with the Court, however, as the Court was aware Russel had paid the filing fee, these statements call into question Lauren's counsel's integrity in this filing.
9. Lauren's unnecessary and misleading objection wasted the time of Russel and the Court.

WHEREFORE, Russel asks this Court to deny Lauren's *Opposition to Request to Submit on Ex Parte Motion to Stay* filed on February 25, 2025

DATED THIS 26th day of February, 2025

Kirk Russel Marsh

Kirk Russel Marsh, Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am a pro se litigant living at 10036 Glenmere Road, Fairfax, VA, 22032, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing Objection was served upon the following on the 26th day of February, 2025:

PARTY	METHOD OF SERVICE
Kristy Hanson (9680) Lesley Christiansen (16017) MACARTHUR, HEDER & METLER, PLLC <i>Attorneys for Lauren Marsh Zimmer</i> 4844 North 300 West, Third Floor Provo, Utah 84604 Telephone: (801) 377-1900 Facsimile: (801) 377-1901 Email: kristy@mhmlawoffices.com	Utah Court Electronic Filing System

Kirk Russel Marsh

11:39

100

< Visa Signature cashRewards Plus...

 Search by transaction
description

Only posted transactions will display in
search results.

Pending **SOLID WASTE DISP I****66 - 7879****-\$23.00**

Purchase

February 25, 2025

**DAVISCOURT R****801-4473825 UT -
7879****-\$100.00**

Purchase

February 24, 2025

**EVACUUMSTORE.CO****M 866-972-8227 MA
- 7879****-\$49.38**

Purchase



Accounts



Move Money



Deposits



Cards



More

184701031 - MARSH, LAUREN R and MARSH, KIRK RUSSEL

Parties

KIRK RUSSEL MARSH

10036 GLENMERE RD
FAIRFAX, VA 22032
kirkrussel@gmail.com

Type Party Represented By

Respondent

KIRK RUSSEL MARSH

-

Petitioner

LAUREN R MARSH

KRISTY HANSON

MARSH, LAUREN R and MARSH, KIRK RUSSEL

SECOND JUDICIAL DISTRICT - FARMINGTON DISTRICT COURT

Divorce/Annulment Case

Case Number:

184701031

File Date:

06-29-2018

Assigned Judge:

MICHAEL EDWARDS

Next Hearing:

03-17-2025 11:30 AM

Make a Payment

Account

Total Restitution Amount Due:	\$0.00	Total Restitution Amount Paid:	\$0.00
Total Non-Restitution Amount Due:	\$200.00	Total Non-Restitution Amount Paid:	\$200.00
Total Bail/Bond Accounts Posted:	\$0.00	Total Bail/Bond Accounts Undisposed:	\$0.00
Total Credits Applied for All Accounts:	\$0.00	Recommended Bail:	\$0.00
Community Service Amount and Units:		Last Transaction Date:	02-24-2025
Fee Waiver Request:		Last Payment Date:	

Filed Documents

Search Document

Description

File Date

**** PRIVATE **** Filed: Return of Electronic Notification	02-25-2025
**** PRIVATE **** Filed: Objection to Objection to Request to Submit	02-25-2025
**** PRIVATE **** Filed: Petition to Modify Child Support	02-25-2025
**** PRIVATE **** Filed: Return of Electronic Notification	02-24-2025
**** PRIVATE **** Filed: Memorandum in Support of Russel's Petition to Modify Child Support	02-24-2025
**** PRIVATE **** Filed: Request to Submit on Ex Parte Motion to Stay Petitioner's Motion to Enforce, Motion to Waive Mediation Requirements and Petition to Modify Divorce Decree	02-24-2025

EXHIBIT 22

Return of Electronic Notification

Recipients

RONALD WILKINSON - Notification received on 2024-10-21 23:04:38.11.

CHRISTINA WILSON - Notification received on 2024-10-21 23:04:28.917.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF CASE ACTIVITY

-

Activity has occurred RE: 184701031
Case Title: MARSH, LAUREN R and MARSH, KIRK
RUSSEL
Judge: MICHAEL EDWARDS
Commissioner: CHRISTINA WILSON
Date: 10-15-2024
Court: 2nd District - Farmington
District
Farmington District Court
Document(s) Filed: US Court of Appeals Fourth Circuit Informal Brief
for Habeas

This notice was automatically generated by the courts auto-notification system.

-

The following people were notified electronically:

RONALD WILKINSON for LAUREN R MARSH

The following people have not been notified electronically by the Court. Therefore, if service or notification is required, it must be completed according to Rule:

Minor Child N. M.

KIRK RUSSEL MARSH

Minor Child I. M.

Minor Child I. M.

EXHIBIT 23

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Elder W. Christopher Waddell: Trust in God is personal, family motto

21 May 2011, 12:00 a.m. MDT



By R. Scott Lloyd

Stenciled wording above a door leading out of the home of Elder W. Christopher Waddell and Sister Carol S. Waddell reads "Return with honor." But, Elder Waddell said, their implicit family motto, as much as anything else, has been "Trust in the Lord" (see Proverbs 3:5).

To Elder and Sister Waddell, the two sayings tie in together. "You do things the Lord's way, and things will work out just fine; we will be able to return to Him with honor," he explained.

It was a belief instilled within him during his youth in Los Angeles by good parents who were converts to the Church after marriage and by stalwart local Church leaders.

These included his bishop, Elbert Steele, who would ask Christopher, a college athlete returning home on breaks from San Diego State University, not "How's volleyball going," but "How are you doing? Are you saying your prayers, staying strong, staying active in the Church?"

"I really appreciated those questions that didn't have anything to do with sports, but with the things that were important," reflected Elder Waddell, who was sustained at general conference in April as a member of the First Quorum of the Seventy.

Such values would be solidified as Elder Waddell served in the Spain Barcelona Mission from 1978-80.

"It was, up to that point, no question, the most influential experience of my life," he said of his experience as a young missionary. So influential, in fact, that his former mission president, David Doxey, was the first person he called after his father to spread the news that he would be returning to the mission in 2006 as its president.

"It just cemented everything from daily scripture study and daily prayer to temple work."

Sister Waddell, in fact, recalls the occasion just after their honeymoon when she awoke to find that he was in another room reading the scriptures. "I asked, 'What are you doing?' and he said, 'I always read my scriptures at this time.' He said, 'This is what I learned on my mission, and it's a habit I want to keep.' It's something he's done our whole married life."

Elder and Sister Waddell met while he was attending San Diego State on a volleyball scholarship, having learned the sport as part of youth activities in his home ward. He was an All-American player his last year

at the university and played in the World Club championship tournament in Argentina in 1983.

"We met at a Church young adult dance in Long Beach," she recalled. "He asked me to dance."

They were both home for the summer. They went back to their respective universities, she at BYU, and kept up a long-distance relationship, one that culminated in marriage in the Los Angeles Temple almost two years to the day after they met in 1982.

The Waddells would experience again and again what he expressed in these words: "We have in our minds sometimes how we want things to happen, but when we trust the Lord and we're willing to accept His will, we usually don't get what we want, we get what we need.

And, fortunately, He gives us what we need more often than what we want."

A couple of incidents illustrate that, one occurring before and during his mission.

He had played volleyball at a junior college and then submitted his papers pursuant to a mission call.

Thereafter, he received a call from the volleyball coach at Pepperdine University, where he had always wanted to attend and play. The university offered him a scholarship. When he said he would be gone for two years, the university offered to hold his scholarship for him.

"And so I thought, 'This is great; the Lord's going to bless me for serving Him,' " he said. But about midway through the mission, there was a change in coaching staff at the university, and Elder Waddell received a letter informing him he would have to qualify for the scholarship based on how well he could perform at the time of his return.

"For a few days, it was a test of my faith," he said. "I finally realized, 'I just need to trust the Lord. I'm on my mission; He's not going to abandon me for serving Him.' I asked for forgiveness and got back to work. And it was probably two or three months later that I received a letter from the coach at San Diego State offering me a full scholarship, sight unseen."

A former high school and junior college teammate had talked about him at San Diego State, and the school needed someone in the position Elder Waddell played.

The other illustrative incident happened early in their marriage. They wanted to move to San Diego and, almost as an afterthought, prayed about it.

The clear answer was no.

Things progressed in his banking career, and the opportunity to move to San Diego came a year later. This time, the clear answer to their prayer was yes.

"We learned that had we tried to move a year earlier, it wouldn't have worked," he said. The door would have been shut on career advancement, perhaps permanently. "We didn't know that though; the Lord knew."

Elder Waddell draws this lesson: "Sometimes the Lord wants to take you from Point A to Point B, and we think it's a straight line. But sometimes He has to move you to C or D first and then back to B, and you just don't know that at the time."

rscott@desnews.com

Biographical information

Family: born June 28, 1959, in Los Angeles, Calif., to Wayne and Joann Waddell. Married Carol Stansel on July 7, 1984, in the Los Angeles California Temple. Four children: Lauren Renee (Russel) Marsh, Rebecca Joann (Gerrit) Winkel, Marc Christopher and Jonathon William.

Education: bachelor's degree in history from San Diego State University; graduate work in BYU executive MBA program.

Career: first vice president of investments at Merrill Lynch, working in international division since 1986 with clients primarily in Mexico.

Community Service: board member of the International Community Foundation based in San Diego, Calif., and working primarily with philanthropy across the border in Mexico.

Church Service: full-time missionary in Spain Barcelona Mission, 1978-80; Area Seventy; president of Spain Barcelona Mission, 2006-2009; stake president and counselor; mission president's counselor;

EXHIBIT 24



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Agency & Disciplinary Actions

\$ PAY FINE

10143380-3902

SEARCH

Dana Emmons

✓ **10143380-3902** — Marriage & Family Therapist **(Surrendered)**

ACTIONS

NO DISCIPLINARY ACTIONS, OR NO DISCIPLINARY ACTIONS WITHIN THE TIME FRAME ESTABLISHED IN UTAH CODE 63G-4-106 & 107**

CITATIONS

NO CITATIONS, OR NO CITATIONS WITHIN THE TIME FRAME ESTABLISHED IN UTAH CODE 63G-4-106 & 107**

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License Lookup Verification

10/7/24, 1:23 PM

Details for Dana Robison Emmons

License Information

Name:	Dana Robison Emmons
City, State, Zip, Country:	Norman OK 73071 United States
Profession:	Clinical Mental Health
License Type:	Clinical Mental Health Counselor
License Number:	10143380-6004
Obtained By:	Endorsement
License Status:	Surrendered
Original Issue Date:	10/28/2016
Expiration Date:	10/04/2017
Agency and Disciplinary Action*:	NO DISCIPLINARY ACTIONS WITHIN THE TIME FRAME ESTABLISHED IN UTAH CODE 63G-4-106 AND 107**
Docket and Citation Number(s):	N/A
E-Prescriber:	

This information is accurate as far as is contained in the Division's official records. It does not reflect whether an entity required to maintain a current registration with the Division of Corporations is current in that registration. You can verify such status at <https://secure.utah.gov/bes/bes>. Additionally, this verification does not show a complete license history or interruptions of licensure. Original issue dates listed as 01/01/1910 and 01/01/1911 were unknown at the time the Division implemented its first electronic licensing database.

*NOTE: The disciplinary documents linked to this website include final orders issued by DOPL, with the exception of citations. [Click here for citations.](#)

EXHIBIT 25

License Lookup Verification

10/31/24, 10:37 AM

Details for Dana Robison Emmons

License Information

Name:	Dana Robison Emmons
City, State, Zip, Country:	Saint Charles MO 633041409 United States
Profession:	Marriage & Family Therapy
License Type:	Marriage & Family Therapist
License Number:	10143380-3902
Obtained By:	Endorsement
License Status:	Surrendered
Original Issue Date:	01/18/2017
Expiration Date:	08/02/2024
Agency and Disciplinary Action*:	YES View Actions
Docket and Citation Number(s):	2024-226, 2017-566, 2024-226
E-Prescriber:	

This information is accurate as far as is contained in the Division's official records. It does not reflect whether an entity required to maintain a current registration with the Division of Corporations is current in that registration. You can verify such status at <https://secure.utah.gov/bes/bes>. Additionally, this verification does not show a complete license history or interruptions of licensure. Original issue dates listed as 01/01/1910 and 01/01/1911 were unknown at the time the Division implemented its first electronic licensing database.

*NOTE: The disciplinary documents linked to this website include final orders issued by DOPL, with the exception of citations. [Click here for citations.](#)

EXHIBIT 26

The Order of the Court is stated below:

Dated: November 27, 2019 /s/ MICHAEL S. EDWARDS
03:59:26 PM District Court Judge

DOUGLAS D. ADAIR, (#6460)
ADAIR LAW FIRM, P.C.
533 West 2600 South, Suite 370
Bountiful, UT 84010
Telephone: (801) 292-0409
Facsimile: (801) 292-6414
E-Mail Address: dadair@adairlegal.com
Attorney for Petitioner

PRIVATE RECORD

**IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH
DAVIS COUNTY, FARMINGTON DEPARTMENT**

LAUREN R. MARSH, Petitioner, v. KIRK RUSSEL MARSH, Respondent.	FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: SUPPLEMENTAL DECREE OF DIVORCE Case No.: 184701031 Judge: Michael Edwards Commissioner: Christina Wilson
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On August 15 and August 16, 2019, this matter came on for a two day Bench Trial (the "Trial") before the Honorable Michael S. Edwards. Petitioner Lauren R. Marsh ("Petitioner") personally appeared along with her counsel of record, Douglas D. Adair. Respondent Kirk Russel Marsh ("Respondent") appeared via telephone along with his counsel of record, D. Michael Nielsen. On May 14, 2019, the Court issued an Order granting Petitioner a Bifurcated Decree of Divorce, leaving all other issues open for trial. The parties then argued the remaining disputed issues during these two days of Trial. The Court having heard argument from both counsel, having reviewed the evidence presented, and having reviewed the papers and pleadings on file herein, hereby enters the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. Petitioner is a resident of Davis County and was for a period of six (6) months prior to the filing of this Petition. Jurisdiction and venue are proper in the Court.
2. Both parties have submitted to the Court's jurisdiction.
3. Utah is the children's home state under the Uniform Child Custody Jurisdiction Enforcement Act, or the UCCJEA.
4. There are no other proceedings pending related to the parties' minor children.
5. The parties were married on May 31, 2008, in San Diego, California.
6. The parties have three children together. The first is N.R.M. (born in November of 2010); the second is I.L.M. (born in June of 2012); and the third is I.A.M. (born in June of 2015).
7. During the parties' marriage, Petitioner was the primary caretaker of the parties' minor children.
8. Petitioner stopped working full-time when she was pregnant with the parties' first child, about December 2009, and was a homemaker from that point until the parties were separated by Respondent's arrest.
9. During the marriage, both parties were involved in the care of their children and both parties had been caring and devoted parents.
10. Before his arrest, Respondent was an involved father who was affectionate to the children and had a strong bond with them. He read to them, he played with them, and when he

was not working, he assisted Petitioner with the care of the children.

11. Respondent was involved in serious financial criminal activity between about 2012 and 2017. The activity involved, at a minimum, fraudulent loans, including one to a business Respondent acquired an interest in.

12. Respondent's criminal illegal business activity created a need for cash flow. The uncontroverted evidence is that this caused Respondent to dissipate marital assets as follows:

- a. Withdrawal from retirement assets in the amount of \$20,000.00 to \$25,000.00 for Respondent's attorney fees.
- b. Another withdrawal from retirement assets in a similar amount, though Respondent was not sure of the exact amount.
- c. Encumbrance of the parties' Honda Odyssey minivan, and the replacement for that van. The replacement value was over \$20,000.00 and was used as collateral for one of Respondent's loans. This led to the van, which Petitioner thought was owned free and clear of any lien, to being repossessed in November 2017, shortly before Respondent's sentencing.

13. The Court finds that it is reasonable to conclude that Respondent dissipated at least \$60,000.00 in marital assets, given the preceding findings. The Court reached the retirement account withdrawal by taking the lower of the two numbers that Respondent testified to being \$20,000.00. Respondent testified that a similar withdrawal in the amount of \$20,000.00 to \$25,000.00 was withdrawn. This brings the total to \$40,000.00. The Court then took the low estimate of \$20,000.00 for the Honda Odyssey minivan, given the testimony that was provided.

Thus, the Court finds that Respondent dissipated at least \$60,000.00 in marital assets, and that is definitely a fact from all of the evidence that was presented to the Court.

14. Respondent was arrested for serious federal financial crimes: identity theft, fraud, etc., in July of 2017.

15. Respondent was temporarily released from federal custody in August of 2017 and was allowed to be under the supervision of his sister until he was imprisoned for his crimes in early January of 2018.

16. While Respondent was temporarily released from custody, Petitioner facilitated his having weekly parent time with the parties' minor children. From the testimony presented, this was about once per week. Petitioner also facilitated Respondent seeing the children for the Thanksgiving and Christmas holidays that year.

17. Petitioner moved with the children from Northern Virginia to North Salt Lake City, Utah, in late December 2017.

18. Respondent went into federal prison camp in Cumberland, Maryland, in early January of 2018. Respondent is still in that facility and will be for an unknown amount of time. His current release date listed on the prison's website is in 2023, but Respondent testified that because of changes in federal law, he may be released sooner. The bottom line is that the Court, nor anybody who testified, is really aware of exactly when Respondent will be released.

19. Since Respondent's incarceration in the prison camp, Petitioner has facilitated phone calls between Respondent and the three minor children. For the time the Court is considering, there have been two phone calls each week. Petitioner feels that this is too much,

but Respondent feels that it is appropriate. The Court will discuss that a little bit more later.

20. Respondent has taken the minor children from Utah to Maryland once each year since Respondent has been incarcerated. There was a lot of testimony about these visits. The Court finds that, while it may not be intentional on the part of Petitioner or her family members, she has angst or anxiety with the visits. The children, especially the oldest, N.R.M., senses the Petitioner's feelings about the visits. This causes the children to have anxiety about the visits.

Further, the Court finds that this is exacerbated by conflict between the parties in the presence of the children. While this will hopefully be reduced because the divorce matter will now be resolved, the Court concludes that it would be in the best interests of the children for someone other than Petitioner or her family members to facilitate Respondent's parent time.

21. Respondent's parents have appeared before the Court and expressed their willingness to facilitate Respondent's parent time. They convinced the Court that they have the best interest of the children at heart and will comply with Court orders, and place the well-being of the children first.

22. While Respondent is in federal prison, he can communicate with people outside the prison by U.S. Mail, a messaging system similar to email, and by phone calls from Respondent to the person outside the prison. Respondent has regularly communicated with Petitioner and the minor children by these means throughout his incarceration.

23. The Court previously granted a bifurcated Decree of Divorce. That Order was entered by the Court on May 14, 2019.

24. Petitioner's current income is \$1,803.00 per month. That is simply using Petitioner's stated income of \$26.00 per hour at an average of 16 hours per week.

25. According to Respondent's testimony, his current income is about \$60.00 per month for work he does while incarcerated. While Respondent made more than \$100,000.00 per year up through the time he was fired from his job for his criminal activity, the Court does not find that it is equitable to impute income to Respondent in this amount. It is not possible for the Court to conclude what Respondent's earning capacity will be when he is released from prison with federal felony convictions. The Court concludes that Respondent will not be able to work in the area he was working in because of those convictions.

26. Respondent cannot benefit from tax deductions while he is incarcerated. Furthermore, the Court will take these deductions into consideration in making equitable financial orders for the parties.

27. The Court finds that Petitioner's documentation establishes a need of \$1,000.00 per month for alimony.

28. The Court finds that Respondent does not currently have the income or assets to have the ability to pay alimony.

29. The parties bought a home during the marriage and they gained equity in the home during the marriage.

30. The home was encumbered by a first mortgage and a second mortgage or home equity line of credit, or otherwise known as a HELOC. The Court finds that these mortgage balances were not appreciably impacted by Respondent's fraudulent activity.

31. In August of 2017, Respondent conveyed title in the marital home to Petitioner on the advice of counsel.

32. The marital home was sold by Petitioner after Respondent's arrest. The remaining equity in the marital home is \$120,000.00.

33. There are no marital debts remaining.

34. The parties, particularly Respondent, have debts in their own names. Respondent's debts include a very large restitution order in his federal criminal case.

35. The Court does not find evidence of financial arrears in this case where Petitioner has been receiving extensive financial assistance from her family and Respondent's family since Respondent was arrested.

36. Neither party's family is requesting reimbursement for the financial assistance they have provided to Petitioner.

37. When Respondent is released from prison, he intends to spend as much time as possible with the minor children; however, he does not know exactly what he will be doing in that regard.

CONCLUSIONS OF LAW

LEGAL CUSTODY

1. The Court concludes that it is in the best interest of the children that the parties share joint legal custody of their minor children.

2. Under Utah Code Ann. § 30-3-10(1)(b), there is a rebuttable presumption that joint legal custody is in the best interest of the children, except in the special cases or situations

enumerated in that code section. The Court concludes that none of these “special cases” have been proven by a preponderance of the evidence in this case, specifically:

- a. There is no evidence of domestic violence.
- b. The element of special physical or mental needs of a parent or child making joint legal custody unreasonable is not applicable in this case. The Court concludes that there is nothing so difficult about the situation for the parents or the children that the parties cannot share joint legal custody.
- c. While there is a large physical distance between the parties, and the Respondent and the children, the Court finds that the issues the Court is granting joint decision making authority on are such that communication by the parties about these subjects in question is not unreasonable.
- d. The Court does not find that any other factor would cause the Court to conclude that this is a special case that should keep the Court from ordering joint legal custody.

3. Next, in considering the factors under Utah Code Ann. § 30-3-10.2(2) the Court concludes that joint legal custody is in the best interest of the children and the presumption has not been rebutted.

- a. First, the Court concludes that the physical, psychological, and emotional needs and development of the children would benefit from joint legal custody. Over the entire lives of these three young children, it will be for their benefit to have both parents give meaningful input about major decisions in their lives.

- b. The Court concludes that each of the parties has demonstrated the ability

to give first priority to the welfare of the children and reach shared decisions in each child's best interest. The Court did not hear anything that makes it think that either of the parties will really appreciably disagree about key decisions in the children's lives due to their values, religious beliefs, etc., being well aligned.

c. The Court concludes that both parties are capable of encouraging and accepting a positive relationship between their children and the other parent. Both parties' testimony demonstrated that this happens, and the Court wants to encourage the parties to continue this for the sake of their children. The Court appreciates the efforts, particularly of the Petitioner, in speaking positively about the Respondent and encouraging the children to love their father. The Court believes that both parties will do that in the future, as well.

d. The Court concludes that both parties participated in raising the children before Respondent's incarceration.

e. The Court further concludes that, but for Respondent's incarceration, he would be regularly caring for the children now and that he will most likely resume that when he is released. Joint legal custody will facilitate a smooth transition into that scenario when he is released.

f. The Court concludes that while both parties have been imperfect in this area, they have the willingness, maturity, and ability to protect the children from conflict that might arise between them. This is especially true given the structure the Court will provide for decision making and parent time. Again, the parties haven't been perfect. There has been some conflict in the presence of the children, but the parties have learned from that and will do better

moving forward.

g. Prior to Respondent's incarceration, the parties' co-parenting was excellent. It has been less so since his incarceration, but the parties have been learning how to work with this difficult situation and will do better in the future. They both want to put what is best for the children first.

h. Further, while communication with Respondent is somewhat difficult in the federal prison camp, the Court concludes that the evidence was that Petitioner can communicate with the Respondent through the prison's electronic message system, by U.S. Mail, and by phone calls from Respondent to Petitioner. These means are sufficient for the Respondent to give meaningful input on the major decisions in the children's lives.

Additionally, The Court has considered but does not find the factors set forth in Utah Code Annotated 30-3-10.2 i. through j relevant.

4. After considering all of those factors, the Court concludes that the parties should share joint legal custody with the following terms:

a. Petitioner is to make all the minor or day-to-day routine decisions concerning the minor children until Respondent is released from custody.

b. After Respondent is released from custody, the parent who has the children in his or her custody at the time will make these minor decisions and provide notice to the other parent where necessary or prudent, within a reasonable amount of time.

c. The parties are to share joint decision-making authority on all major medical, dental, orthodontic, psychiatric, educational, extracurricular activities, or religious

decisions.

d. While Respondent is incarcerated, Petitioner is to have tie-breaking decision-making authority after a full and fair discussion with Respondent. There must be a good faith effort to resolve the issue and compromise for the best interests of the children.

e. After Respondent is released from custody, the parties shall use a different dispute resolution mechanism. First, they will discuss the matter themselves, trying in good faith to resolve the problem at hand. Second, they will consult with an expert in the area in question to get help resolving the disputed issue – again, that is if they are unable to do it themselves. Each of these steps is only as needed if they cannot resolve the issue at one of the lesser steps. Third, the parties will attend mediation to resolve the issue before bringing it before the Court unless it involves an emergent need for the child in question. Each party is to pay for half of the costs of any such mediation. Finally, the parties can bring unresolved matters before the Court. It is the Court's intent that both parties keep the habit of resolving any disputed issues at the lowest level possible, again, with an eye toward resolving them for the best interests of the children. If the parties are unable to resolve the dispute according to the foregoing mechanisms, Petitioner shall have the tie breaking vote on child matters and Respondent shall have the right to put the matter before the Court. However, the Court is attempting to avoid a situation which occurs too often – in a primary physical custody arrangement, the parent with primary physical custody decides that because he/she has the tie-breaking authority, they have all authority, and they just make all the decisions. The Court does not want that situation in this case.

f. Counsel for the parties are to assist the parties in formulating a parenting plan that contains any other details the parties choose to include in their parenting plan, to

referring to the advisory guidelines and the joint legal custody statute.

PHYSICAL CUSTODY

5. First, the Court concludes that the statutory factors in Utah Code Ann. § 30-3-10.2 mandate that the Court conclude that the only reasonable physical custody order, given the Respondent's lengthy incarceration, is to award primary physical custody of the minor children to Petitioner, subject to Respondent's rights to reasonable parent time.

6. Next, since the parties do not currently know where Respondent will live when he is released from prison, the Court finds that its primary custody award is made subject to modification by the Court if Respondent files a petition to modify within one year from the time Respondent is able to relocate after his release from prison. So long as a petition to modify is filed within that time, Respondent will not have to prove that his release from prison and subsequent relocation, if applicable, was not foreseeable when the Court entered its order. The Court feels that it is appropriate to leave that door open for modification in order to be equitable to the parties.

PARENT TIME

7. Given the physical distance between the parties, the Court awards Respondent parent time pursuant to Utah Code Ann. § 30-3-37. However, given the facts of this case and the Petitioner's move to Utah being made necessary by Respondent's criminal acts, Respondent is to pay the cost for his parent time with the minor children.

8. Given Respondent's incarceration, he is not capable of exercising the time that is allotted to him under Utah Code Ann. § 30-3-37. In fact, Respondent is not capable of exercising

parent time at all without assistance. However, the Court concludes that Respondent is entitled to two in-person visits per year while he is incarcerated. One visitation period will be for two weeks each summer. The other will be for one week's time during the Winter Break or school recess, as arranged by the parties. However, Petitioner is to enjoy Christmas Day with the children at least every other year.

9. The Court encourages the parties to work things out with each other, and not have to approach the Court over every parent time issue. The Court has tried to allow flexibility as the parties may agree, but the Court also wants enough direction that the parties can work within that structure and peaceably share parent time.

10. For the reasons stated in the Court's Findings of Fact, Respondent's parents are to facilitate Respondent's parent time by providing the transportation, care, housing, and supervision of the minor children for these parent time periods. An itinerary of travel plans shall be provided to Petitioner within reasonable advance notice of the parent time.

11. Once Respondent is released from prison, he is to enjoy parent time in accordance with Utah Code Ann. § 30-3-37, with the caveat that he is to do so with the assistance of an AFCC qualified reunification counselor. The counselor is to provide assistance and direction to the parties as to whether or not a break in the parent time schedule is needed, and, if so, what the schedule should be. The parties are to follow that reunification schedule. Respondent is to pay all costs associated with the counselor. If the parties are unable to agree on a reunification counselor, the issue will be resolved under the standard dispute resolution mechanism the parties will have in place. The Court's intent is to give the parties maximum leeway as co-parents to

figure this out and get the help they need there. Neither party should have more say about the choice of counselor than the other. This is not a situation where we want a “hired gun.” The parties need someone who will give an honest opinion as to what is best for the children and make appropriate reunification recommendations that the parties can then follow.

12. The Court concludes that, given the young age of the children, frequency of contact with the Respondent is very important and that calls between Respondent and the children twice each week is better for the children and their bond with their father. Frequency is more important than duration. The day and time for these calls will be coordinated between the parties as it has in the past.

13. The Court makes this Order having considered all the evidence presented and has done its best to narrowly tailor the Order so that it preserves Respondent’s right to have a good relationship and bond with his children while minimizing any negative impact on Petitioner’s parental rights.

14. The Court is specifically not awarding or ordering grandparent visitation as in *Jones v. Jones*. Rather, the Court has concluded that his Order is the best way to maintain Respondent’s parental rights and connection to the minor children while he is incarcerated. The Court also concludes that this Order is in the best interest of the children because it will minimize conflict between the parties and maximize parent time of the children with each party.

CHILD SUPPORT & OTHER FINANCIAL CONCERNS RELATING TO THE CHILDREN

15. Respondent is to pay child support to Petitioner using a sole physical custody calculation. Petitioner’s gross monthly income is \$1,803. Respondent’s income is \$60.00 per

month.

16. Under the low income calculation, Respondent would only owe \$30.00 per month for child support. Given the facts of this case, the reason for Respondent's lack of earnings being his own fault due to his criminal conduct, and the need of the parties' minor children for support, the Court finds that it is justified in deviating from the guidelines in ordering Respondent to pay Petitioner child support in the amount of \$700.00 per month for base child support beginning September 1, 2019.

17. The Court concludes that this is the appropriate amount of child support after analyzing all of the factors in Utah Code Ann. § 78B-12-202(3). The Order is deviated because it would be inequitable to the parties' children to order \$30.00 a month child support where their father is in prison because he committed a criminal act. Further, it is not equitable to impute Respondent's former income to him for the reasons stated in the Findings of Fact.

18. The parties are to share the costs of medical and dental insurance, if any, equally. Additionally, out-of-pocket medical, dental, orthodontic, or psychiatric care of their minor children shall be paid by the parties as set forth in Utah Code Ann. § 78B-12-212, as follows:

(1) A child support order issued or modified in this state on or after July 1, 2018, shall require compliance with this section as of the effective date of the child support order unless the court makes specific findings as to good cause to deviate from the requirements of this section.

(2) (a)

(c) The court shall order that health care coverage for the medical expenses of a minor child be provided by a parent.

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sha The court shall order that a parent provide insurance for the medical expenses of a minor child, if insurance is available to that parent at a reasonable cost.

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(3) In determining which parent shall be ordered to maintain insurance for medical expenses, the

(c) court or administrative agency may consider the:

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- (4) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the child's portion of insurance unless the court finds good cause to order otherwise.
- (5) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the child's portion of the premium. If the parent does not have insurance but another member of the parent's household provides insurance coverage for the child, the parent may receive credit against the base child support award or recover the other parent's share of the child's portion of the premium.
- (6) The child's portion of the premium is a per capita share of the premium actually paid. The premium expense for a child shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.
- (7) The order shall, in accordance with Subsection [30-3-5\(1\)\(b\)](#), include a cash medical support provision that requires each parent to equally share all reasonable and necessary uninsured and unreimbursed medical and dental expenses incurred for a dependent child, including deductibles and copayments unless the court finds good cause to order otherwise.
- (8) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Sec. 601 et seq., upon initial enrollment of the dependent child, and after initial enrollment on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Sec. 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should have known of the change.
- (9) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

- (10) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections [\(8\)](#) and [\(9\)](#).

19. The parties are to share the cost of work-related childcare costs as set forth in Utah Code Ann. § 78B-12-214, as follows:

- (1) The child support order shall require that each parent share equally the reasonable work-related child care expenses of the parents.

(2) (a)

If an actual expense for child care is incurred, a parent shall begin paying his share on a monthly basis immediately upon presentation of proof of the child care expense, but if the child care expense ceases to be incurred, that parent may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

(b)

(i)

In the absence of a court order to the contrary, a parent who incurs child care expense shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent.

(ii)

In the absence of a court order to the contrary, the parent shall notify the other parent of any change of child care provider or the monthly expense of child care within 30 calendar days of the date of the change.

- (3) In addition to any other sanctions provided by the court, a parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with

Subsection (2)(b).

20. The Court concludes that there are no arrearages owed given the support payments received from both families by the Petitioner.

21. Tax exemptions for the minor children. Respondent cannot benefit from the tax exemptions while he is incarcerated. Respondent is also not able to provide as much support for his children as he should be able to provide because of his criminal actions. Given this fact, the Court awards all of the child tax exemptions to Petitioner for so long as the children can be claimed for income tax purposes.

ALIMONY

22. The Court concludes that Petitioner has demonstrated a need for alimony in the amount of at least \$1,000.00 per month. However, Respondent does not have the ability to pay alimony to Petitioner given his incarceration and lack of employment or income. Respondent also does not have the assets needed to pay it. To be equitable to the parties, the Court awards Petitioner alimony in the amount of \$1.00 per month, and the Court retains jurisdiction over this issue should it ever be appropriate to address it in the future, given a substantial change in circumstances. This alimony obligation shall terminate upon the earliest of any of the following events:

- a. Petitioner's remarriage or cohabitation in a spousal role.
- b. At such time as the length of the alimony award exceeds the length of the marriage.
- c. The death of either party.

d. As otherwise provided under operation of law.

MARITAL RESIDENCE

23. The Court concludes that the marital home was a marital asset, not a separate asset. The home was acquired during the marriage and the equity in the home is marital property. Respondent's criminal activity did not appreciably impact the value of the home or its encumbrances, according to the evidence received by the Court.

24. The Court would normally divide the \$120,000.00 in equity remaining in the property equally between the parties. However, where the Court has found that Respondent dissipated at least \$60,000.00 of marital funds in the course of his illegal activities, the Court concludes that it is equitable to award the entire \$120,000.00 in marital equity to the Petitioner. The Court further awards these home equity proceeds to Petitioner based upon the overall financial impact that Respondent's actions had on the marital estate.

PERSONAL PROPERTY

25. All other items of personal property have already been divided by the parties and the Court orders them to be divided as they have been divided by the parties.

DEBTS

26. The Court concludes that, based on the evidence presented, there are no remaining marital debts.

27. The Court further concludes that the parties are each to be responsible for the debts in their own names and hold the other party harmless therefrom.

28. Respondent is specifically to hold Petitioner harmless for any debts in his name,

including tax debts or other debts that were caused by his criminal activity.

NAME CHANGE

29. If Petitioner wants to restore her name to her former surname of Waddell, she can do so.

MUTUAL RESTRAINING ORDER

30. Based upon the stipulation of the parties, the Court will enter a mutual restraining order prohibiting each party from harming, harassing or annoying the other party, and from making negative or derogatory comments about the other party in the presence of the children, or allowing third parties to do so.

LIFE INSURANCE

31. Petitioner may maintain the existing life insurance policies on herself and/or on the Respondent. Any life insurance policy Petitioner maintains is at her cost, and she has ownership of them.

ATTORNEY'S FEES & COSTS

32. The Court concludes that given the fact that neither party has the ability to pay the other party's attorney's fees, each party is to pay his/her own attorney's fees and costs.

END OF ORDER

THE COURT'S SIGNATURE APPEARS AT THE TOP OF THE FIRST PAGE

APPROVED AS TO FORM:

/s/ D. Michael Nielsen

Signed by Douglas D. Adair

With permission of D. Michael Nielsen

D. Michael Nielsen
Attorney for Respondent

NOTICE TO PARTIES

TO THE PARTIES ABOVE-NAMED:

Pursuant to Utah R. Civ. P. 7(j), this proposed Findings of Fact and conclusions of Law will be filed with the Court seven days after service upon you. Your objections, if any, must be filed with the Court within seven days after service.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 2019 I served a true and correct copy of the foregoing Findings of Fact and Conclusions of Law upon the following:

D. Michael Nielsen
Attorney for Respondent
505 South Main Street
Bountiful, Utah 84010
VIA EMAIL

/s/ Carren S. Leavitt

EXHIBIT 27

FILED

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH,

Plaintiff,

vs.

THE STATE OF UTAH; JUDGE MICHAEL
EDWARDS; DANA EMMONS,

Defendant

Case No.: 1:24-CV-516

2024 MAY 13 A 10:43

JUDGE PATRICIA TOLLIVER GILES
MAGISTRATE JUDGE IVAN D. DAVIS

KIRK DAVID AND SHAWNEE MARSH SUPPLEMENTAL BRIEF

Dated this 12th of May, 2024.


Kirk David Marsh


Shawnee Marsh

JUDGE PATRICIA TOLLIVER GILES MAGISTRATE JUDGE IVAN D. DAVIS - 1

Kirk David Marsh and Shawnee Marsh brief

May 12, 2024

1. The question has been raised by the State (paragraph 5.2) of a lack of standing for Russel to raise a claim on my behalf. As noted in the original filing, I was not a named party in the subject divorce proceedings. My attachment to the case was through Russel as a third party. My third party standing is explained below. If the Judge rules that I have independent standing and need to be a named party in the suit between Russel Marsh and the State of Utah et. al., please accept this brief as my willingness to do so.
2. I had been voluntarily supporting my grandchildren through a voluntary monthly gift of \$700 for over a year before the trial. When asked by the court, through Russel's attorney, if I would agree to a court mandated \$700, I said no, but that I would continue my voluntary commitment of \$700 to support the family. I had previously agreed with the commissioner to pay for transportation costs for the girls to visit their father earlier that month. Future discussion of travel costs were not raised to me.
3. At trial the judge required Russel to pay \$700 in child support, knowing full well his entire monthly income was \$60, basically requiring me to be obligated by the court. Additionally the court added 1/2 of all medical and work expenses, as well as payment of all future travel expenses to see Russel. without discussing this with me nor obtaining my approval for that obligation. In order to protect Russel and permit visits rather than get into arguments, I chose to cover the obligations. Russel's attorney recommended not appealing because I had no standing in the child custody court, that there was little likelihood of success. and the probable costs that would likely exceed the monthly

payments. Additionally we feared that an appeal would be used to further alienate the girls from Russel.

4. This situation continued until December 2023 when the girls' mother refused to deliver the girls for Christmas vacation, wrongly claiming that she was not required to deliver them until a later time. This action caused us to change plane tickets, adding approximately \$1000 additional dollars to the cost of the travel.
5. I felt the abuse of the situation at least justified not gifting a monthly payment. Additionally the girls' mother had remarried, had bought a house and then purchased a second house for over \$1.1M (without any recorded liens) to knock down and build a bigger house. Obviously financial need was not a problem and Russel, as a full time student, still has no income. Since the ruling at trial, I have paid \$ in child support including medical and other expenses and \$45,000 in travel expenses.
6. Russel has been able to reestablish a level of relationship with his daughters, so I feel it is time past to fix these injustices.
7. My presumption has been that I had no separate standing to be party to the suit, only through Russel as a third party, as the judgment was officially against him. Third party standing is governed by the Supreme Court ruling in *Kowalski v. Tesmer*. 543 U.S. 125 (2004) The Court said that its cases had held that a party seeking third-party standing must make two showings:
 - a. First, we have asked whether the party asserting the right has a "close" relationship with the person who possesses the right.
 - b. Second, we have considered whether there is a "hindrance" to the [rights] possessor's ability to protect his own interests.

8. In this case, Russel has a close relationship with me, his father, and that relationship was used by the court to extract the demanded funds
9. Additionally there is a hindrance to my claiming my rights as I was not directly a party to the child custody proceedings. That should meet the Supreme Court elements of proof for third party standing.
10. However, if the State of Utah claims that I need to be added to justify the claim, and the judge rules that I have independent standing, I am willing to do so. Please accept this brief as being added if the Judge so rules.
11. Shawnee Marsh also expresses willingness to be added to the claim.
12. This does not change the underlying facts, violations and substance of the claim.

EXHIBIT 28



Russel Marsh <kirkrussel@gmail.com>

child support and reimbursement payments

7 messages

Lauren Zimmer [REDACTED]
To: Russel <kirkrussel@gmail.com>

Tue, Jun 27, 2023 at 6:25 PM

Hi Russ,

Thank you for sending the child support earlier this month. I appreciate you consistently sending those payments at the beginning of each month.

I do have a question about the amount you sent. I understand that the child support amount is cut in half this month because the girls have been with you. However, between the health insurance amount you normally send, along with the reimbursements for various medical appointments, medications, etc. the amount was still around \$100 less than I was expecting.

In an effort to keep things organized and clear for both of us, it would be very helpful if you could send a quick email each month describing how you arrived at the amount you are sending.

For example:

\$700 for child support

\$235 for health insurance

\$x for so and so's medical appointment

\$x for [REDACTED]'s medication

It shouldn't take more than a few minutes and it would really help to keep things clear, especially as you're sending a single lump amount each month and not individual payments/reimbursements.

It would be helpful if you could send me an email detailing the June 2023 payment and then moving forward each month. I appreciate your help with this.

Sincerely,
Lauren

Lauren Zimmer [REDACTED]
To: Russel <kirkrussel@gmail.com>

Thu, Jul 6, 2023 at 8:57 AM

Hi Russ,

I wanted to follow up on this from last week and also thank you for the child support payment on July 2.

Could you please help me understand how you arrived at the support payment amount for June?

It would be very helpful for me to understand how you arrived at that amount, and also for future months moving forward.

Sincerely,
Lauren

> On Jun 27, 2023, at 4:25 PM, Lauren Zimmer [REDACTED] wrote:

>

> Hi Russ,

[REDACTED]

EXHIBIT 29

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 23-4110

September 19, 2025

LAURA A. GADDY; LYLE D. SMALL; LEANNE R. HARRIS, individually and
on behalf of all others similarly situated,

Plaintiffs - Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,

Defendant - Appellee, and

DOES 1-50, Defendants.

**BRIEF OF AMICUS CURIAE
CANDICE KULBETH
IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR
REHEARING EN BANC**

Candice Kulbeth

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

/s/ Candice Kulbeth

Amicus Curiae, pro se

INTEREST OF AMICUS CURIAE

I, Candice Kulbeth, submit this brief as *amicus curiae*. I have a scholarly and practical interest in the application of preclusion doctrines that result in “no-forum” situations where litigants are denied due process and constitutional rights. In particular, I argue that in First Amendment cases a merits-before-doctrine approach preserves litigants’ rights without sacrificing those of defendants. This can be accomplished by translating religious claims into secular statutory standards for evaluation on the merits.

RULE 29(A)(4)(E) STATEMENT

I authored this brief *pro se*, without assistance or advice of counsel. No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money intended to fund the preparation or submission of this brief. No person other than myself contributed money intended to fund its preparation or submission.

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The Family, A Proclamation to the World7

CERTIFICATE OF COMPLIANCE

This document complies with the 2,600-word limit as set forth by Fed. R. App. P. 29(b)(4). This document contains 2,491 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

PROOF OF SERVICE

I certify that on September 19, 2025, I caused the foregoing Motion for Leave and Amicus Curiae Brief to be filed with the Clerk of the Court through the CM/ECF system, which will serve all registered counsel of record.

Out of an abundance of caution, I further certify that I electronically mailed copies to:

- David Jordan (djordan@foley.com) and
- Wesley Harward (wharward@foley.com), counsel for Defendant-Appellee Corporation of the President of the Church of Jesus Christ of Latter-day Saints; and
- Kay Burningham (kay@kayburningham.com), counsel for Plaintiffs-Appellants Gaddy, Small, and Harris.

Dated: September 19, 2025

Respectfully submitted,

/s/ Candice Kulbeth

Candice Kulbeth, pro se

Provo, Utah County, Utah

I. INTRODUCTION

When the First Amendment forces courts to walk a narrow path between two dangers - excessive entanglement in religious questions or excessive deference that allows religious authority to displace civil law - the autonomy debate often collapses into extremes. On one side, churches argue for categorical immunity. On the other, plaintiffs insist that fraud always vitiates autonomy.

Neither approach is stable. Absolute immunity creates constitutional black holes where rights vanish without remedy; unlimited fraud review risks entanglement. The principled solution is a merits-first rule: courts translate religious context into secular statutory terms and then decide claims on the merits. That preserves autonomy without extinguishing rights.

This case presents that choice squarely. By treating autonomy as a threshold bar, the panel extinguished claims before they could be heard. En banc rehearing is necessary not to decide who prevails, but to restore constitutional balance by ensuring that claims are resolved in a secular forum tethered to statute.

II. THE CIRCUITS ARE SPLIT

In *Huntsman v. Corporation of the Presiding Bishop*, the Ninth Circuit reached the merits of fraud claims against the Church.¹ This ruling is significant for

¹ *Huntsman v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints*, 90 F.4th 1234 (9th Cir. 2024).

two reasons: it examined whether billions in tithing reserves were handled “consistent” with doctrine and representations, and it treated autonomy not as a threshold bar but as a defense to be tested and rejected on the merits.

In contrast, the panel here in *Gaddy v. COP* held that autonomy foreclosed claims at the outset.² Allegations that the Church misrepresented its history and finances were never evaluated under statute; they were barred simply because adjudication might implicate religious context.

The Fourth Circuit in *Marsh v. Utah* took yet another path, upholding the district courts invocation of Rooker–Feldman to dismiss for lack of jurisdiction.³ The plaintiff’s allegation—that a Utah divorce court had displaced statutory standards with ecclesiastical testimony—was never reviewed in any federal forum.

These divergent outcomes—merits in the Ninth, autonomy bar in the Tenth, preclusion in the Fourth—leave litigants’ rights to geography. That fracture is not hypothetical; it is active, destabilizing constitutional doctrine, and requires correction by this Court sitting en banc.

III. CATEGORICAL DOCTRINES CREATE CONSTITUTIONAL BLACK HOLES

The autonomy doctrine, like preclusion and abstention, is meant to preserve judicial restraint. Properly applied, these doctrines limit courts from exceeding

² *Gaddy, et al v. Corp. of the President of the Church of Jesus, et al*, No. 23-4110 (10th Cir. 2025).

³ *Marsh v. Utah*, No. 24-1964, 2024 (4th Cir. Dec. 9, 2024) (unpublished).

their jurisdiction or intruding into matters of religious belief. But when applied categorically, they function as doctrines of abdication. Instead of preserving constitutional boundaries, they extinguish rights altogether.

That danger is not theoretical. In *Marsh v. Utah*, the Fourth Circuit declined to hear constitutional claims by invoking Rooker–Feldman. The effect was to foreclose any merits review of a claim that a state court had adopted ecclesiastical testimony as binding law. Whatever the strength of the underlying claim, the federal court’s use of a jurisdictional bar meant the rights asserted were never even tested. The result was not judicial restraint but judicial silence.

The same danger is present here. The panel decision in *Gaddy* treated autonomy as an absolute bar to fraud claims, regardless of whether they alleged secular misrepresentations about history or finances. By doing so, the panel did not simply avoid entanglement—it prevented any adjudication. The claims were extinguished, not answered.

This pattern—rights vanishing into procedural black holes—undermines both Free Exercise and Due Process. It creates the anomaly that a citizen may have a substantive constitutional right but no forum in which to assert it. The First Amendment does not permit such an outcome. Restraint cannot mean abdication, and abstention cannot mean annihilation.

The solution is not to discard autonomy or preclusion altogether, but to cabin them. A merits-first principle ensures that claims are translated into secularly cognizable terms and tested against statute. Where a claim cannot be translated without entanglement, dismissal may follow. But where it can, autonomy should not be a categorical shield. Only this approach preserves both religious liberty and the constitutional right to a forum.

IV. A CASE FOR MERITS FIRST: *HUNTSMAN AND MARSH V. UTAH*

A. *Huntsman: Merits Translated to Secular Standards*

In *Huntsman*, the Ninth Circuit reviewed allegations that the Church misrepresented the use of billions of dollars in tithing funds. The plaintiffs claimed they were induced to donate based on assurances of how their contributions would be spent.

The court did not dismiss those claims on autonomy grounds. Instead, it reached the merits. It examined whether the Church's handling of funds was "consistent" with its doctrine and public representations. By engaging in that inquiry, the Ninth Circuit signaled that autonomy is not a categorical bar to fraud claims.

The Ninth Circuit's approach is significant for two reasons. First, it demonstrates that secular claims can be adjudicated without entangling courts in

theology. The panel did not attempt to define the truth of religious belief, but to measure conduct against representations made. Second, it shows that autonomy can operate as a defense evaluated on the merits rather than as a threshold barrier that forecloses adjudication altogether.

This Court is now confronted with the same structural question. Unlike the Ninth Circuit, the panel here treated autonomy as an absolute bar. That divergence, over the same defendant and substantially parallel claims of misrepresentation, creates an undeniable circuit split. The question is not whether the Church should prevail on the merits. It is whether plaintiffs alleging secular fraud are entitled to have their claims tested on the merits in the first place.

B. Marsh v. Utah: Constitutional Rights Extinguished by Preclusion

A third approach appears in *Marsh v. Utah*. There, a litigant alleged that a Utah divorce judgment had unconstitutionally relied on ecclesiastical testimony from a senior Church officer. He sought federal review on the ground that the trial court had effectively displaced statutory standards with religious definitions, violating constitutional rights.

The Fourth Circuit did not reach the merits. Instead, it invoked the Rooker–Feldman doctrine and dismissed for lack of jurisdiction. The result was that the plaintiff’s constitutional claims were never heard in any federal forum. Whatever the strength of those claims, they were extinguished by a procedural bar.

C. The Consequence of Divergence: A Doctrinal Fracture That Swallows Rights

The split is not simply academic. When courts apply autonomy, preclusion, or abstention as categorical bars, the result is that substantive rights vanish without ever being tested. The same institution, facing substantially similar allegations, has been subject to merits review in one circuit, categorical dismissal in another, and jurisdictional foreclosure in a third. This inconsistency destabilizes the law and undermines confidence in the courts.

The problem is not merely divergent outcomes but a deeper constitutional flaw: doctrines designed to preserve judicial restraint are being misapplied as doctrines of abdication. The result is a set of constitutional black holes where claims are extinguished without remedy. That danger is vividly illustrated in Utah itself, where ecclesiastical testimony displaced statutory law in a civil proceeding and later insulated itself from federal review. It is to that example this brief now turns.

V. MARSH V. MARSH: FRAUD RISK WHEN AUTONOMY IS INVERTED

The danger of categorical bars is best illustrated in Utah. In *Marsh v. Marsh*, a divorce proceeding, the trial court permitted Presiding Bishop W. Christopher Waddell of the Church of Jesus Christ of Latter-day Saints to testify not only about ecclesiastical definitions of “fatherhood” and “worthiness,” but also about custody,

dissipation of assets, and financial responsibility.⁴ The court then adopted those ecclesiastical pronouncements as if they were statutory fact findings.

As a member of the Presiding Bishopric, Waddell controls the Church's finances and sits on the board of Ensign Peak Advisors, which later admitted to filing fraudulent SEC reports.⁵ He referenced his ecclesiastical position, background in finance, and prior general authority talks to bolster his credibility, condemning Marsh and influencing the division of marital property and parental rights.

Waddell's testimony directly shaped the court's orders. He argued that Marsh's criminal conviction made him an unfit father, leading the judge to condition parent-time on a reunification therapist despite finding that Marsh was "an involved father who was affectionate to the children and had a strong bond with them," and that the children's anxiety stemmed from their mother. Though appearing as a character witness, Waddell's statements on "dissipation" of assets were accepted as fact and used to award the estate entirely to his daughter. He further invoked the Church's *Proclamation on The Family*⁶ to assert shared "faith's

⁴ *Marsh v. Marsh*, No. 184701031 (Utah Dist. Ct. Nov. 27, 2019).

⁵ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re Ensign Peak Advisors, Inc. & The Church of Jesus Christ of Latter-day Saints*, Exchange Act Release No. 96951, Admin. Proc. File No. 3-21306 (Feb. 21, 2023).

⁶ The Church of Jesus Christ of Latter-day Saints, *The Family: A Proclamation to the World* (Sept. 23, 1995), <https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world>.

beliefs” with the court and testified that Marsh’s parents must accept responsibility for his actions.⁷ The court adopted this line as well, converting what had been a voluntary monthly gift from Marsh’s father into a compulsory support obligation:

“Now under the low-income calculation, the respondent would pay only \$30 per month in child support. Given the facts of the case, the reason for the respondent’s lack of earnings, his own fault, his own criminal conduct, the needs of the minor children for support, The Court finds that it is justified in deviating from the guidelines in ordering [Marsh] to pay petitioner child support in the amount of \$700 per month.... It would be inequitable to the parties’ children to order \$30 per month in support when their father is in prison because he committed a criminal act.”⁸

As the law defines it, Waddell’s testimony constituted fraudulent misrepresentation.⁹ First, Waddell misrepresented his own beliefs under the color of ecclesiastical authority; he condemned Marsh for the very kind of misconduct under scrutiny in his own office. Second, he reinterpreted doctrine to secure a civil outcome—declaring Marsh ineligible for forgiveness because he was “in federal prison for federal crimes” and unfit as a father because he failed to meet the

⁷ Informal Brief for Appellant at 18-22, *Marsh v. State of Utah*, No. 24-1964 (4th Cir. Oct. 10, 2024), ECF No. 4.

⁸ *Id.* at 6.

⁹ See *Restatement (Second) of Torts* § 525 (Am. L. Inst. 1977) (defining fraudulent misrepresentation as a false representation made with knowledge or without sufficient basis, intended to induce another to act, and resulting in justifiable reliance to the recipient’s detriment); *Field v. Mans*, 516 U.S. 59, 70–71 (1995) (recognizing common-law fraud elements of misrepresentation, scienter, intent, reliance, and damages); *Midgley v. Rayrock Mines, Inc.*, 374 F.3d 1039, 1047 (10th Cir. 2004) (citing § 525 and applying its elements).

Proclamation's standards.¹⁰ These were not neutral facts but doctrinal redefinitions, presented as ecclesiastical authority and accepted as dispositive evidence.

Thus, the court relied on religious office and testimony as though they supplied statutory standards. Autonomy is meant to keep civil courts out of theology. Here, it was inverted—ecclesiastical answers displaced civil law. The orders entrapped Marsh and his parents: Marsh was awarded no assets, yet obligated to pay support while incarcerated, and his parents, compelled to shoulder expenses, lacked standing to appeal.

When Marsh later sought federal review, the district court dismissed under Rooker–Feldman in *Marsh v. Utah*;¹¹ dismissal was affirmed upon appeal.¹² The fraud was insulated twice: first by adoption at the state level, and then by a categorical bar at the federal level. A citizen alleging that religious office supplanted statute was denied any merits hearing. This sequence demonstrates why a merits-first principle is essential. Only by confining ecclesiastical testimony to character witness limits and translating it into statutory terms can courts preserve due process and prevent autonomy from being inverted into fraud.

¹⁰ *Marsh* Informal Br. at 18.

¹¹ *Marsh v. Utah*, No. 1:24-cv-516, slip op. at 1 (E.D. Va. Sept. 13, 2024).

¹² *Marsh v. Utah*, No. 24-1964 (4th Cir. Dec. 9, 2024) (unpublished).

VI. *GADDY* RISKS REPEATING THE *MARSH* ERROR

The fraud and constitutional distortion evident in *Marsh v. Marsh* are not isolated. They are the natural consequence of treating church autonomy as a categorical bar. That is precisely the error the panel committed in this case.

Just as Waddell's testimony induced a Utah court to adopt ecclesiastical authority as civil law, the panel here extinguished Gaddy's claims without translating them into secular statutory terms. In both instances, autonomy was inverted: instead of shielding courts from entanglement, it was used to insulate ecclesiastical authority from accountability.

The danger for this Court is evident. If autonomy continues to be applied as a threshold bar, the Tenth Circuit will replicate the *Marsh* sequence—claims rooted in secular fraud will be dismissed without hearing, religious authority will remain untested, and any attempt at federal review will collapse into preclusion doctrine. Citizens alleging that ecclesiastical office has supplanted statute will once again find themselves without remedy.

The lesson of *Marsh v. Marsh* is that fraud occurs when ecclesiastical testimony is accepted as dispositive. The lesson of *Marsh v. Utah* is that categorical doctrines prevent correction. The lesson for this Court is clear: only a merits-first rule can prevent the Tenth Circuit from entrenching the very constitutional black holes that have already harmed litigants in Utah. That is why

en banc review is not discretionary, but a constitutional duty to preserve both judicial integrity and litigants' rights.

VII. CONCLUSION

This case presents more than a dispute over the boundaries of fraud and faith. It presents a test of whether the Constitution permits substantive rights to vanish into doctrinal black holes. The Ninth Circuit has held that such claims proceed to the merits. The Fourth Circuit has extinguished them through preclusion. The panel here adopted a categorical autonomy bar. The result is an untenable fracture in constitutional law, where access to a forum depends not on the nature of the right but on the happenstance of geography.

The lessons of *Marsh v. Marsh* and *Marsh v. Utah* are clear. Fraud occurs when ecclesiastical testimony is adopted as civil command. Remedy disappears when categorical doctrines prevent correction. Together, they demonstrate that autonomy inverted is autonomy abused.

This Court now faces a choice: whether to entrench the panel's categorical bar or to restore constitutional balance through en banc review. The path of restraint is not abdication, but translation—ensuring that claims are stated in secular, statutory terms and then resolved on the merits. That principle honors both church autonomy and due process.

For the sake of judicial integrity, constitutional consistency, and the rights of citizens entitled to a forum, the Court should grant rehearing en banc.

EXHIBIT 30

The Order of the Court is stated below:

Dated: August 05, 2025
02:59:05 PM

/s/ CHRISTINA WILSON
District Court Commissioner



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**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH**

In the Matter of the Marriage of: LAUREN R MARSH, Petitioner, and KIRK RUSSEL MARSH, Respondent.	ORDER ON HEARING DATED JULY 14, 2025 HEARING Case No. 184701031 Judge Michael Edwards Commissioner Christina Wilson
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THIS MATTER came regularly for hearing before the Honorable Commissioner Christina Wilson for Petitioner's *Motion to Transfer Venue, Motion to Enforce Order and for Sanctions* and Respondent's *Motion to Stay Motion to Enforce* on the 14th day of July, 2025 at the hour of 11:00 am. Petitioner, Lauren Zimmer (fka Lauren Marsh), was present and represented by counsel, Melanie Adams Cook, Esq. Respondent, Kirk Russel Marsh, was present, and was represented by counsel, Heather Christensen.

The Court, having reviewed the pleadings, received the arguments by the parties and,

upon good cause showing and as justice and equity require, THE COURT HEREBY FINDS AND ORDERS:

ORDER:

1. The Court GRANTS the Petitioner's Motion to Transfer Venue to Fourth Judicial District Court in Provo. Rule 42(c) of the Utah Rules of Civil Procedure addresses the timely motion of any party to transfer venue any action for any purpose. In determining whether to transfer venue is the appropriate venue for transferred proceedings, the court may consider, among other factors, whether the transfer will: (1) increase the likelihood of a fair and impartial determination in the action; (2) minimize expense or inconvenience to the parties, witness or the court; (3) decrease delay; (4) avoid hardship or injustice otherwise caused by venue requirements; and (5) advance the interests of justice.

a. The Court does not find that a transfer of venue would increase the likelihood of a fair and impartial determination. The Court finds that both courts have the ability to make a fair and impartial determination of the action.

b. The Court finds that the transfer would minimize the expense or inconvenience to the parties where the Petitioner now lives in Utah County, the minor children and has for five (5) years. The minor children reside in Utah County. Any witnesses, most witnesses would reside either in Utah County or in Virginia. There is an airport located in Utah County and there is an airport in Salt Lake County. So, the out-of-state witnesses, it would not be any more convenient

to go to Utah County as opposed to Davis County for purposes of travel for the out-of-state witnesses. For the in-state witnesses, they're located in Utah County. So the Court finds it would minimize expense or inconvenience in state witnesses to have the matter transferred to Utah County.

c. In terms of decreasing delay, the Court does not have specific information for this factor, and the Court finds this factor neutral.

d. The Court does not find that there is hardship or injustice caused by the venue requirements.

e. The Court finds that the transfer of venue would advance the interest of justice because it would allow the trial any potential trial or a venturing hearing, where witnesses would be required in-person appearances to occur, including the minor children, as most of the witnesses would live in Utah County.

2. For these reasons, the Court GRANTS the Petitioner's Motion to Transfer Venue to Fourth Judicial District in Provo.

3. The Court finds that there is a fairly new Petition to Modify, and the Court has not ruled on this Petitioner. Once the case is transferred, Fourth Judicial District Court shall set up the case management conference and follow their procedures regarding adjusting the remainder of the motions and the issues.

//

Electronically SIGNED by the Court, as shown at the top of this Order

Approved as to form:

/s/Holly Christensen (Electronically signed by Melanie Adams Cook with permission of Holly Christensen on 7/30/2025)

HOLLY CHRISTENSEN

Attorney for Respondent

RULE 7 NOTICE

You will please take notice that pursuant to Utah Rules of Civil Procedure 7, the foregoing document will be submitted for signature at the expiration of seven days unless written objection is filed within that time period.

CERTIFICATE OF SERVICE

I hereby certify that I did cause to be e-filed and emailed therefore served a true and correct copy of the foregoing, ***Order on Hearing July 14, 2025*** this 21st day of July, 2025, to the following:

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